

(1993) 08 SHI CK 0003

In the High Court Of Himachal Pradesh

Case No : Regular Second Appeal No. 148 of 1993

Tulsi Ram

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 18-08-1993

Acts Referred:

Central Reserve Police Force Act, 1949 — Section 11(1)
Central Reserve Police Force Rules, 1955 — Rule 27, 27(7)
Constitution of India, 1950 — Article 311, 311(2)

Citation : (1994) 1 ShimLC 263

Hon'ble Judges : Kamlesh Sharma, J

Bench : Single Bench

Advocate : Prem Goel and Ajay Goel, for the Appellant; Dharam Chand, Central Government Standing Counsel, for the Respondent

Final Decision : Allowed

Judgement

Kamlesh Sharma, J.—Both the Courts below have dismissed the suit of the Appellant-Plaintiff Tulsi Ram and denied him decree for declaration and consequential relief of mandatory injunction sought for by him. By order dated 19-1-1988 of Commandant, Group Centre, SSB, Shamshi (Ex. DD) a penalty of dismissal from service was imposed upon him, which he had challenged as illegal, void and unconstitutional, and sought declaration that he may be deemed to be in service and entitled to all the consequential benefits thereof Now, by way of the present regular second appeal he has challenged the decree and judgment dated 23-12-1992 passed by the Additional District Judge, Kullu whereby he has confirmed the decree and judgment dated 31-8-1989 of the Senior Sub-Judge, Lahaul and Spiti at Kullu.

2. The brief facts of the case are that Tulsi Ram was appointed as Constable in SSB, Group Centre, Shamshi (Kullu) in the year 1966. On 30-8-1974 he fell ill and the Medical Officer Incharge found him suffering from Tuberculosis and referred him for treatment to District Hospital, Kullu, where he remained

admitted from 2-9-1974 to 8-9-1974. After his discharge from the hospital, Tulsi Ram sought permission to bring his daily-need articles from his earlier place of posting but on the way he got acute pain and became unconscious and was taken to his home where he underwent further treatment. After getting well, he joined his duties but he was not marked present. Thereafter, his explanation was sought for vide memo No. 2041 dated 30-10-1974 by the Company Commander, D Company, Shamshi which he filed and after considering it, further proceedings were dropped. The Respondents-Defendants took no action for about 12 years but on 4-4-1987 he was served with Memo of Charge Sheet dated 21-3-1987 (Ex. PB) proposing to hold inquiry against him under Rule 27 of Central Reserve Police Force Rules, 1965 (hereinafter called the Rules). According to him he submitted detailed reply, which has not been brought on record during trial and requested to afford him an opportunity to prove his innocence. His stand is that he never pleaded guilty but the Respondents-Defendants have denied it and have placed on record the proceedings of the inquiry and report of the inquiry to prove that he did plead guilty and despite plea of guilty evidence of the prosecution was recorded on the analysis of which the inquiry report was given by the Inquiry Officer. According to them the order of punishment is legal, valid and proper.

3. This Court has heard the learned Counsel for the parties and gone through the record.

4. The only substantial question of law raised by Mr. Prem Goel, appearing for Tulsi Ram, is that the order of dismissal is bad as it is violative of principles of natural justice inasmuch as the copy of the inquiry report, which found basis of the order of dismissal, was not given to Tulsi Ram to enable him to represent against the proposed penalty. He is not disputing that the inquiry conducted by the Inquiry Officer suffers from any infirmity. In support of his submission he has relied upon Union of India and others Vs. Mohd. Ramzan Khan, and Dalip Singh v. Commandant 60 Bn. C.R.P.F. and Ors. 1985 LIC 449.

5. After going through the documents-Ex. DA proceedings of departmental inquiry held on 13-4-1987. Ex. DC inquiry report dated 30-10-1987 and Ex. DD order of dismissal, this Court finds that the charge-sheet dated 21-3-1987 was served upon Tulsi Ram on 3-4-1987 and thereafter he appeared before the Inquiry Officer on 13-4-1987 when he pleaded guilty to the charge leveled against him. As per the statement of articles of charge, Annexure-1 to the charge-sheet dated 21-3-1987 (Ex. DB) the charge against him was that he "committed misconduct in his capacity as a member of force (SSB) u/s 11(1) of the C.R.P.F. Act, 1949, in that he on 8-9-1974 absented from duty and is absenting from duty till date." In support of this charge the statement of imputation of misconduct or misbehavior, Annexure-II to the charge-sheet is in the following terms:

No. 67458 Ex-Constable Tulsi Ram while deployed in D Coy Shamshi, Section No 1, PL. No. 3, on 30-8-1974 was sent from Section Hqrs to D Coy Hqrs in connection with to hand over the firing lists at D Coy Hqrs Shamshi vide DDE

No. 5 dated 30-8-1974. On 8-9-1974 he applied for permission to bring his daily use articles from his Section (Section No. 1, PL No. 3 at Hurla) and accordingly he was allowed to bring the same vide DDE No. 7 dated 8-9-1974. He was further advised to stay at Section Hqrs if medical aid is available in that area for his own treatment, but he did not report at Sec Hqrs and absented himself enroute on 8-9-1974 (FN). Coy Commander D Coy was directed to intimate whether Constable Tulsi Ram joined his duty or otherwise vide Commandant, 5th HP SSB Bn. Memo No. 20235 dated 7-11-1974. In response to Comdt 5th HP SSB Bn. memo dated 7-11-1974, CC D Coy apprised that Constable Tulsi Ram is still absent from duty vide their memo No. 2108 D dated 11-11-1974. When the period of absence exceeded 60 days a Court of enquiry to enquire into the circumstances under which he absented himself was ordered vide Commandant 5th HP SSB Bn. (now GC, SSB, Shamshi) order No. 23106-08 dated 23-12-1974. On receipt of the report of the said Court of enquiry, he was declared deserter w.e.f. 8-9-1974 (FN) and his name was struck off the roll from the same date vide Comdt. 5th HP SSB Bn. Shamshi Order No. 2478-79 dated 14-2-1975. Hence this charge

6. The Inquiry Officer in his report dated 30-10-1987 (Ex. DC) held that Tulsi Ram pleaded guilty to the charge, which has also been proved/established beyond any reasonable doubt on the assessment of other oral and documentary evidence produced before him. The disciplinary authority, Commandant, Group Centre, SSB, Shamshi agreed to the findings of the Inquiry Officer in respect of charge No. 1 and found Tulsi Ram not a fit person to be retained in service and imposed penalty of dismissal from service upon him.

7. It is not in dispute that before imposing penalty of dismissal from service, Tulsi Ram was not given copy of the inquiry report dated 30-10-1987 to enable him to make representation, if any. Mr. Dharam Chand, learned Counsel for the Respondents-Defendants, urges that under the Rules applicable to the present case inquiry report was not required to be served before passing the order of punishment, as the provision of giving notice to show cause against the proposed penalty along with copy of the inquiry report i.e Rule 27(7) of the Rules stood deleted by G.S.R. 75 dated 26-1-1980. He further submits that judgment of the Supreme Court in Union of India and Ors. v. Mohd. Ramzan Khan (supra) is not applicable to the present case as in the case before the Supreme Court, CCS CCA Rules, 1965 as well as Article 311 of Constitution of India as amended by 42nd Amendment were under consideration. He does not deny that Tulsi Ram, a member of para military force, is also governed under Article 311 of the Constitution. His another submission is that if the law laid down in Union of India and Ors. v. Mohd. Ramzan Khan (supra) is found applicable to the present case, it is prospective and not retrospective as the punishment stood imposed on Tulsi Ram before this judgment was delivered by the Supreme Court.

8. This Court does not find any force in either of the submissions made by Mr. Dharam Chand. The law laid down by the Supreme Court in Union of India and

Ors. v. Mohd. Ramzan Khan (supra), may be in a case in which the inquiry was held and punishment was awarded under CCS CCA Rules, 1965 and the effect of 42nd Amendment of the Constitution on the right of a government servant to receive a copy of the inquiry report before he is punished was considered but the ratio of the judgment is that irrespective of the rules by which a government servant is governed and notwithstanding 42nd Amendment in the Constitution, it is necessary to furnish a copy of the report of the inquiry report along with recommendation, if any, in the matter of proposed punishment to delinquent to enable him to make representation against it, if any. Non furnishing of the inquiry report would amount to violation of principles of natural justice and make the final order bad. The principles of natural justice are to be read in every statute unless excluded as these are inherent and implicit even though the statute is silent about it.

9. In Union of India and Ors. v. Mohd. Ramzan Khan (supra), the learned Judges of the Supreme Court noticed original Sub-article (2) of Article 311 of the Constitution, the first amendment made in it by 15th Amendment of the Constitution, the second amendment made by 42nd Amendment of the Constitution and also number of judicial pronouncements made by it on the point in issue and observed:

...With the Forty-Second Amendment, the delinquent officer is not associated with the disciplinary inquiry beyond the recording of evidence and the submissions made on the basis of the material to assist the Inquiry Officer to come to his conclusions. In case his conclusions are kept away from the delinquent officer and the Inquiry Officer submits his conclusions with or without recommendation as to punishment, the delinquent is precluded from knowing the contents thereof although such material is used against him by the disciplinary authority. The report is an adverse material if the Inquiry Officer records a finding of guilt and proposes a punishment so far as the delinquent is concerned. In a quasi-judicial matter, if the delinquent is being deprived of knowledge of the material against him though the same is made available to the punishing authority in the matter of reaching his conclusion, rules of natural justice would be affected.

10. The learned Judges of Supreme Court also noticed the following para of earlier judgment of the Supreme Court in Mazharul Islam Hashmi Vs. State of U.P. and Another, wherein it was pointed out:

Every person must know what he is to meet and he must have opportunity of meeting that case. The legislature, however, can exclude operation of these principles expressly or implicitly. But in the absence of any such exclusion, the principle of natural justice will have to be proved.

And held:

Deletion of the second opportunity from the scheme of Article 311(2) of the Constitution has nothing to do with providing of a copy of the report to the

delinquent in the matter of making his representation. Even though the second stage of the inquiry in Article 311(2) has been abolished by amendment, the delinquent is still entitled to represent against the conclusion of the Inquiry Officer holding that the charges or some of the charges are established and holding the delinquent guilty of such charges. For doing away with the effect of the enquiry report or to meet the recommendations of the Inquiry Officer in the matter of imposition of punishment, furnishing a copy of the report becomes necessary and to have the proceeding completed by using some material behind the back of the delinquent is a position not countenanced by fair procedure. While by law application of natural justice could be totally ruled out or truncated, nothing has been done here which could be taken as keeping natural justice out of the proceedings and the series of pronouncements of this Court making rules of natural justice applicable to such an inquiry are not affected by the 42nd amendment. We, therefore, come to the conclusion that supply of a copy of the inquiry report along with recommendations, if any, in the matter of proposed punishment to be inflicted would be within the rules of natural justice and the delinquent would, therefore, be entitled to the supply of a copy thereof. The Forty-Second Amendment has not brought about any change in this position.

11. The learned Judges of the Supreme Court have held that the inquiries which are directly handled by the disciplinary authority and those which are allowed to be handled by the Inquiry Officer can easily be classified into two separate groups as in the earlier case there is no inquiry report on account of the fact that the disciplinary authority is the Inquiry Officer and the principles of natural justice cannot be invoked for holding the order of penalty bad. The learned Judges of the Supreme Court concluded:

We make it clear that wherever there has been an Inquiry Officer and he has furnished a report to the disciplinary authority at the conclusion of the inquiry holding the delinquent guilty of all or any of the charges with proposal for any particular punishment or not, the delinquent is entitled to a copy of such report and will also be entitled to make a representation against it, if he so desires, and non-furnishing of the report would amount to violation of rules of natural justice and make the final order liable to challenge hereafter.

12. Inviting the attention of this Court to paragraphs 17 and 18 of the judgment, Mr. Dharam Chand, has urged that the law laid down in this judgment of the Supreme Court is prospective and those cases in which the penalty had already been imposed before the announcement of this judgment, the matter could not be reopened and the punishment awarded be held bad. No doubt, the learned Judges of the Supreme Court have specifically stated in para 17 that the law laid down by them will have prospective application and no punishment imposed shall be opened to challenge on this ground, but if in a matter the order of imposition of punishment is under challenge and is not finally upheld as in the present case, the application of the law laid down in this judgment is not retrospective but prospective.

13. Besides the above referred judgment of the Supreme Court, this Court also draws support from the judgment of Jammu and Kashmir High Court in Dalip Singh v. Commandant, 60 Bn C.R.P.F. and Ors. 1986 LIC 449. In that case the Petitioner was a constable in C.R.P.F. and the point involved was identical to the present case. Quashing the order of punishment it was held that the copy of the report of the Inquiry Officer was required to be served upon the delinquent before inflicting penalty upon him despite deletion of Sub-rule (7) of Rule 27 of the Rules and amendment of Sub-article (2) of Article 311 of the Constitution of India effected by 42nd Amendment of the Constitution

14. The result of above discussion is that the order of dismissal (Ex. DD) is held bad and quashed on the ground that before passing it, copy of the inquiry report dated 30-10-1987 (Ex. DC) was not served upon Tulsi Ram to enable him to represent against it. The appeal is allowed and the decrees and judgments of the Additional District Judge, Kullu dated 23-12-1992 and of the Senior Sub-Judge, Lahaul and Spiti at Kullu dated 31-8-1989 are set aside.

15. It is clarified that this decision will not preclude the disciplinary authority from revising the disciplinary proceedings and continuing with it in accordance with law from the stage of supply of the inquiry report and pass the final order after considering the representation made by Tulsi Ram, if any. The right of Tulsi Ram to claim consequential benefits from the date of dismissal till the conclusion of inquiry, if held against him, is kept reserved. There is no order as to costs.